

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JOHN MICHAEL DAISY

§

VS.

§

CIVIL ACTION NO. 1:04cv632

DIRECTOR, TDCJ-CID

§

ORDER

Petitioner, a prisoner proceeding *pro se*, previously filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed a notice of appeal of the court's judgment dismissing the petition. Before petitioner can appeal the judgment, a certificate of appealability must issue. 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (a certificate of appealability is a jurisdictional prerequisite to appellate review of the merits of the appeal).

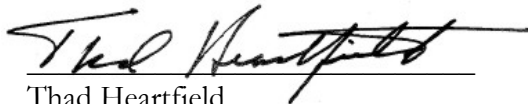
A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Barefoot v. Estelle*, 463 U.S. 880, 893 (1982); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). Where the petition was rejected on the merits, the petitioner, to obtain a certificate of appealability, must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are worth encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable (1) whether the petition raises a valid claim of the denial of a constitutional right and (2) whether the district court was correct in its procedural ruling. *Id.* at 484; *Elizalde*, 362 F.3d at 328. The court must either issue a certificate

of appealability indicating which issues satisfy the required showing, or state the reasons why such a certificate should not issue. FED. R. APP. P. 22(b).

In this case the standards for issuance of a certificate of appealability are not met. For the reasons stated in the findings and conclusions previously adopted in this case, the court finds that petitioner has not made a substantial showing of the denial of a constitutional right or that reasonable jurists would disagree with the procedural ruling. Accordingly, the court is of the opinion that a certificate of appealability should not issue in this case. It is therefore

**ORDERED** that petitioner's request for a certificate of appealability is **DENIED**.

**SIGNED** this the 6 day of **July, 2005**.

  
Thad Heartfield  
United States District Judge